

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC., *et al.*,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

**PLAINTIFFS' OBJECTIONS AND FAIRNESS DESIGNATIONS TO DEFENDANTS'
COUNTER-DESIGNATIONS**

Pursuant to the Court's July 22, 2019 Order Modifying the Pretrial Schedule (Docket No. 223), Plaintiffs Sony Music Entertainment, et al. ("Plaintiffs") hereby submit their objections and fairness designations to Cox's Objections and Counter-Designations to Plaintiffs' Deposition Designations (Docket No. 429).

Plaintiffs' fairness designations reflect deposition testimony which Plaintiffs may offer if Defendants' counter-designated testimony is permitted to be offered at trial. Plaintiffs reserve the right to challenge Defendants' use of any designated deposition testimony at trial depending on its use by Cox, including but not limited to relevance and admissibility. Plaintiffs' specific fairness designations are not intended to waive Plaintiffs' right to counter other testimony that Defendants designated or may designate. Plaintiffs' fairness designations may apply to multiple designations by Cox, and assertion of a fairness designation to a specific line designation is not exclusive or exhaustive. Plaintiffs' fairness designations are made without prejudice to their objections and, to the extent an objection is sustained, Plaintiffs reserve the right to supplement, amend or withdraw fairness designation(s). Plaintiffs also reserve the right to present their own

affirmative designations, counter-designations, and fairness designations in conjunction with designations presented in Defendants' case in chief. Plaintiffs further reserve the right to use deposition testimony without previously designating it for impeachment and to use any deposition testimony that Defendants designate.

Plaintiffs include in their current designations testimony that may be subject to the Court's rulings on *Daubert* motions, motions for summary judgment, or motions *in limine*. Plaintiffs reserve the right to amend their designations in light of the Court's rulings.

Plaintiffs' reiterate their general objections to Defendants' presentation of deposition testimony: 1) from any witness who appears live at trial; 2) on any subject made irrelevant or excluded by the Court's rulings on the motions for summary judgment, *Daubert* motions, or motions *in limine*; and 3) on any basis stated in Plaintiffs' objections to Defendants' Rule 26(a)(3) witness list (Docket No. 229), the objections in which are incorporated by reference as if stated fully herein.

Plaintiffs respectfully submit their fairness designations and specific objections attached hereto as Exhibit A. The objections follow the abbreviations indicated below:

Fed. R. Evid.	Objection	Abbreviation
103(c), 602	Attorney argument; not evidence	AA
104(a), 602	Lack of foundation	F
104(b)	Conditional relevance	CR
106	Incomplete	Inc
401/402	Not relevant	NR
403	Probative value substantially outweighed by danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence	403

404	Inadmissible character evidence	Char
602	Lacks personal knowledge	PK
701	Improper opinion testimony by lay witness	701
801, 802	Hearsay	H
1002	Best evidence	BE
1006	Improper summary	IS
	Subject to Plaintiffs' motions <i>in limine</i>	MIL
Local Civil Rule 5(H)	Highly confidential – subject to sealing	HC
	Assumes facts not in evidence	AF
	Compound	C
	Calls for legal conclusion	CLC
	Mischaracterizes prior testimony or exhibit	Mis
	Nonresponsive	NResp
	Calls for speculation	Spec
	Beyond the scope of witnesses' 30(b)(6) designation	Scope
	Vague, ambiguous, confusing, unclear as to time	VA
	Argumentative	Arg
	Narrative	N
Local Civil Rule 30(F)	Includes objections and statements of counsel	Obj
	Improper/Incomplete Hypothetical	IH
	Leading	L
	Improper counter-designation; outside the scope of affirmative designation	OS

Dated: October 22, 2019

Respectfully submitted,

/s/ Scott A. Zebrak

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